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PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional)
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I hereby certify that this correspondence ~~is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]~~ on SEPTEMBER 26, 2005 *(571-273-8300)* Signature *Anthony G. Sh* Typed or printed name ANTHONY G. SMYTH	Application Number 09/765,077	Filed JAN. 17, 2001
	First Named Inventor RAVI PACHIPALA	
	Art Unit 2155	Examiner DUONG, OANH L.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
        Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒ attorney or agent of record.
Registration number 35,636

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 ____

_____
Signature

ANTHONY G. SMYTH
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SEPTEMBER 26, 2005
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below".

☒ Total of 3 forms are submitted.

Attorney Docket: 090933-0276150
Client Reference: EP-003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: RAVI PACHIPALA, ET AL.

Application No.: 09/765,077   Group No.: 2155

Filed: January 17, 2001   Examiner: Duong, Oanh L.

Title: FRAME HANDLING FOR A THIN CLIENT

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Pre-Appeal Brief Request for Review

This brief is submitted concurrently with a Notice of Appeal in the above-listed Application.
The Notice of Appeal is filed responsive to the Office Action mailed on May 25th, 2005. A
petition for a one month extension of time is filed herewith covering the period August 25th,
2005 until present. It is noted that September 25th, 2005 fell on a Sunday.

1

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REMARKS

In the Final Office Action, the Examiner rejected Claims 1, 11 and 20-23 under 35 USC 102(e) as being anticipated by U.S. Patent No. 6,593,944 to Nicolas et al. The Examiner further rejected Claims 2-10, 12-14, 16-19 and 24 under 35 USC 103(a) as being unpatentable over Nicolas in view of Ishimine 5,764,227.

Applicants address the following specific issues in this pre-Appeal Brief Request, submitting that the references do not teach generating a first data structure having a first pointer for a first frame and a second pointer for a second frame, a data structure or a data file.

Nicolas Does Not Teach All Elements Of The Independent Claims

Independent claims 1, 15 and 20 stand rejected under 35 USC 102 as anticipated by Nicolas. To anticipate a claim, the reference must teach every element of the claim. Nicolas does not teach generating a first data structure having a first pointer for a first frame and a second pointer for a second frame as required by each of the independent claims. Therefore the rejections are improper for at least this reason.

Nowhere in Nicolas is a data structure taught. Nevertheless, the Examiner proposes that a data file is a data structure (see below). However, even allowing *arguendo* such expansive interpretation of the term "data structure," the Examiner's proposal fails because Nicolas does not teach generating a data structure or generating a data file. Indeed, it is notable that even the term "data file" does not appear in Nicolas and, consequently, for the purpose of this discussion only, it will be assumed that the Examiner considers HTML files to be data files containing HTML data. Even with such construction, Nicolas can not be said to teach the required generating a data structure with pointers therein because Nicolas does not teach generating an HTML file. Nicolas merely teaches the reading and processing of HTML files. In Nicolas, HTML files are parsed and representations of the content of the HTML files are displayed (col. 12, lines 7-60). At most, Nicolas may generate frame representations that have corresponding frame identifiers. However, each of the independent claims require the generation of a data structure with pointers therein. Therefore, it cannot be reasonably said that Nicolas anticipates generating a data structure with pointers therein as required by claims 1, 15 and 20. Consequently, the rejections are improper.

2

Nicolas Does Not Teach A Data Structure Or A Data File

The term "data structure" does not appear in Nicolas. Nevertheless, the Examiner proposes that a data file is equivalent in meaning to "data structure. This proposal is factually incorrect as shown below. Further, the proposed substitute term "data file" never appears in Nicolas. It is presumed that in rejecting the claims, the Examiner incorporates an indirection by equating HTML files with Data Files and thence with data structures. This twice-removed equation is also factually inaccurate as will be shown below. Therefore, the Examiner erred in rejecting the claims.

The Examiner erred by adopting a definition of the term "data structure" that is factually incorrect and is clearly inconsistent with commonly accepted usage and with usage by Applicants in the Specification. "If extrinsic reference sources, such as dictionaries, evidence more than one definition for the term, the intrinsic record must be consulted to identify which of the different possible definitions is most consistent with applicant's use of the terms." *Brookhill-Wilk 1*, 334 F. 3d at 1300, 67 USPQ2d at 1137; see also *Renishaw PLC v. Marposs Societa" per Azioni*, 158 F.3d 1243, 1250, 48 USPQ2d 1117, 1122 (Fed. Cir. 1998) ("Where there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meanings."), MPEP 2111.01. In the present Application, the Examiner asserted that "in technology information about data structure ... a data file is an example of data structure" (Office Action of 5/25/2005, Examiner's Response to Arguments, 1(A) at page 2) This interpretation of data structure is clearly inconsistent with definitions commonly accepted in the art and reflected, for example, in the definition provided by the National Institute of Standards and Technology: "An organization of information, usually in memory, for better algorithm efficiency, such as queue, stack, linked list, heap, dictionary, and tree, or conceptual unity, such as the name and address of a person. It may include redundant information, such as length of the list or number of nodes in a subtree" (http://www.nist.gov/dads/HTML/datastructur.html). It will be appreciated that a data file is commonly accepted to be merely a <u>container</u> of data records (see for example http://www.answers.com/data%20file). The characterization of a data file as a data structure is therefore factually incorrect and the rejections are unreasonably made. At the least, it is apparent that extrinsic definitions exist that are different from that provided by the Examiner and the internal record must be consulted to identify which definition is most consistent with the Applicants' use of the term.

3

Upon consulting the Specification of the present Application, it becomes apparent that the definition provided by the National Institute of Standards and Technology is most consistent with the Applicants' use of "data structure." For example:

> Server 112 then creates 320 a data structure which describes the relationship among the frames. In one embodiment the **data structure is a tree**. Figure 2b illustrates a tree 250 for a frameset having three frames. The root of the tree is the frameset, Fo. The tree has one pointer for each frame in the frameset. Each pointer is a URL that points to a document that the frameset indicates is associated with the frame.

(Specification at page 9, line 28 – page 10, line 1). Applicants submit that a data file cannot be characterized as a tree. It is further submitted that it would be improper to attribute the characteristics of the contents of a container to the container for the purposes of rejecting the claims. For example, data files are not compressed images, although data files can store JPEG data.

The Specification also teaches that "Server 112 then stores 340 the data structure in a list" (Specification at page 10, line 6-7). Applicants respectfully submit that a data file would not be considered a hierarchical (tree) data structure that can be stored in a list.

For at least these reasons, it is clear that the Examiner erred in defining the term "data structure" inconsistently with Applicants use in the Specification.

4

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CONCLUSION

For at least the reasons presented above, it is respectfully submitted that it is clear that the Examiner erred in rejecting the claims because the reference does not teach every element of the claims. Examiner further erred by providing a factually incorrect definition of a term to support the rejections and that, absent the erroneous definition, no reasonable basis exists for rejection. Therefore, the rejections are improper and should be withdrawn. Further, the claims are believed to be in form for allowance, and such action is hereby solicited.

Please charge any fees associated with the submission of this paper to Deposit Account Number 033975. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Date: _____September 26, 2005_____

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CERTIFICATION UNDER 37 C.F.R. §§ 1.8 and/or 1.10*
(When using Express Mail, the Express Mail label number is *mandatory;Express Mail certification is optional.*)

I hereby certify that, on the date shown below, this paper (along with any paper referred to as being attached or enclosed) is being facsimile transmitted to the Patent and Trademark Office, (571) 273-8300.

Date: September 26, 2005

Signature

Anthony G. Smyth
(Type or print name of person certifying)

* *Only the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under § 1.8 continues to be taken into account in determining timeliness. See § 1.703(f). Consider "Express Mail Post Office to Addressee" (§ 1.10) or facsimile transmission (§ 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.*

5

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